



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/145215

PRELIMINARY RECITALS

Pursuant to a petition filed November 10, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 06, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly terminated Petitioner's FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sharon Thacker

Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FoodShare benefits in the amount of \$200.00 per month. His last payment was issued on October 3, 2012. (Exhibit 6)
3. Effective November 1, 2012, the agency closed Petitioner's case and placed him on his estranged wife's FoodShare case based upon the belief that the two were living together. (Testimony of Ms. Thacker; O'Brien and Associates Report – Exhibit 4, pgs. 12-31)

4. The agency did not send Petitioner a notice terminating/closing his FoodShare case. (Id.)
5. On October 16, 2012, the agency sent Petitioner's estranged wife a notice indicating that her application for FoodShare benefits was denied because her household income was over the program limit and because Petitioner was part of another case. (Exhibit 2)
6. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 10, 2012.

DISCUSSION

Per the FoodShare Wisconsin Handbook (FSH), a determination of non-financial eligibility for FoodShare benefits must begin with an examination of all household members. *FSH* §3.3.1.1

A "household" is defined as "all persons living in or temporarily absent from the same residence." (Id.)

A "food unit" is defined as "one or more persons who live in the same household and purchase and prepare food together for home consumption." Generally, this group is tested for eligibility together. (Id.)

A "food group" is defined as "persons who are in the same food unit and pass all the individual non-financial criteria." (Id.)

Spouses living in the same household must be included in the same food unit, even if they do not purchase and prepare food together. *FSH* §3.3.1.3

It is the agency's contention that Petitioner cannot have his own FoodShare case and that he should have been included in his estranged wife's case because they resided together since at least September 2012. Petitioner asserts that he has been homeless and that he has not lived with his estranged wife during the time in question.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the termination of benefits, the agency has the initial burden to prove the Petitioner is no longer eligible for benefits.

In September 2012, Petitioner's estranged wife lived at an address on [REDACTED]. However, the agency has not produced a copy of a lease for that address that includes the Petitioner. I would note that the agency hired O'Brien and Associates to conduct an investigation and that the report produced by Investigator Ken Kelly, indicated that he spoke to Jolene Vrana, a property manager for the [REDACTED] address, and was told that Petitioner is not on the lease and is unknown to the property manager.

The agency also relied upon a number of documents that O'Brien and Associates printed off of various websites. However, the documents either pre-date September 2012 or contain incomplete information because the right side of the print out was cut off.

Petitioner states that he has been moving between his brother's residences, one of whom lives on [REDACTED] in Milwaukee. Petitioner provided a copy of a letter from the Social Security Administration dated September 4, 2012 that was addressed to him at the [REDACTED] address. Petitioner also provided a copy of a letter dated October 1, 2012, from the Wisconsin Department of Health Services addressed to Petitioner at the [REDACTED] address.

Based upon the foregoing, it is found that the Department has not met its burden to prove that Petitioner was living with his estranged wife at the [REDACTED] address since September 2012. As such, its basis for terminating Petitioner's FoodShare benefits is not supported by the record. It should also be noted that the agency did not send Petitioner a notice advising him that the agency was closing his FoodShare case effective November 1, 2012.

CONCLUSIONS OF LAW

The agency did not properly notify Petitioner of the termination of his FoodShare benefits.

The agency did not correctly terminate Petitioner's FoodShare benefits.

THEREFORE, it is

ORDERED

That the agency re-open Petitioner's FoodShare case and that it issue to Petitioner all FoodShare benefits to which he is otherwise entitled from November 2012 onward. The agency shall take steps to do this within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

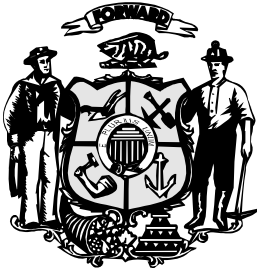
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of December, 2012.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 12, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability